IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 24-6-1996

CRIMINAL APPEAL NO. 966 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

AND

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAMLAL GALLAJI PUROHIT

Versus

STATE OF GUJARAT

Appearance:

MR. SAURIN A. SHAH Advocate for the Petitioner.

MR. S.T. MEHTA, PUBLIC PROSECUTOR for Respondent State.

CORAM : (Coram: S.D. DAVE, and H.R. SHELAT, JJ.

(24/06/96)

ORAL JUDGEMENT: (Per: H.R. Shelat, J.)

The appellant-original accused No.1, calls in question his conviction and sentence for the offences under Section 17 read with Sec. 18 of The Narcotic Drugs

& Psychotropic Substances Act, 1985 (for short "the Act") and Section 66-A of the Bombay Prohibition Act, recorded by the then learned Additional City Sessions Judge, Ahmedabad in Sessions Case No. 282 of 1992 on 10-8-1983.

2. The case of the prosecution in short is that Pravinkumar Nathubhai Barot, at the relevant time serving as Police Inspector in Crime Branch, Ahmedabad, received the information about 20.30 hours on 18th May 1992 that the appellant with the assistance of some one was dealing in opium and other narcotic drugs in his shop No. 53 situated in Adinath Shopping Centre in Rishabhdev Nagar in Ahmedabad. He verified the information received and satisfied himself about the genuineness thereof. He therefore called two panchas and thereafter made necessary entries in the Case Diary. Informing his superior officer, he proceeded to the place for raid. At that time it was about 4.30 a.m. of 19th May 1992. The appellant was awaken. He was then taken to his shop. After the shop was opened by the appellant, the P.I. with the assistance of his police constables, and of course in the presence of panchas, took the search of the shop. From the bulk of the slippers a plastic bag was found. When it was opened, about 940 gms. of opium was found. On being questioned the appellant replied that he was having neither the permit nor any pass to possess the same. It was then clear to the P.I. that the appellant had committed the offence under Section 17 read with Sec. 18 of the Act. The opium found was then seized. The appellant was arrested and panchnama about the seizure and search was drawn undergoing necessary formalities. A complaint was then lodged and PI, Mr. Barot took the investigation in his hand. During the course of the investigation he found that Bhagirath Ruparam was providing the opium and with his active assistance the appellant was dealing in the same. Bhagirath Ruparam was also then arrested after his house was searched where from 245 gms. of opium was found, and for that another offence was registered. At the conclusion of the investigation a chargesheet against the appellant and Bhagirath Ruparam was filed before the Court of the learned Metropolitan Magistrate at Ahmedabad. As he was not competent to hear and decide the case, he committed the same to the Court of City Sessions Judge at Ahmedabad. The then learned Principal Judge of the City Sessions Court transferred the case to the then learned Additional City Sessions Judge for hearing and disposal in accordance with law. A charge Exh.3 was then framed to which both pleaded not guilty. The prosecution then led necessary evidence. Appreciating the evidence before him, the learned Additional City Sessions Judge reached

the conclusion that prosecution had succeeded in establishing the charge levelled against the present appellant, but failed in establishing the same against Bhagirath Ruparam. He therefore acquitted Bhagirath Ruparam with which he was charged, and convicted the present appellant. Consequently the present appellant came to be sentenced to rigorous imprisonment for 10 years and fine of Rs.1,00,000/-, in default rigorous imprisonment for one year more, but no separate sentence of the offence under Section 66-A of the Bombay Prohibition Act was passed. After being convicted the appellant has preferred this appeal and has called the conviction and sentence in question on several grounds.

3. At the time of hearing the learned Advocate representing the appellant tapered his contentions and confined himself to the provision of Section 42 of the Act. According to him non-compliance of mandatory provision of Section 42 would be fatal to the prosecution. In the case on hand the police officer receiving the information was required to reduce the same into writing; and record his reason as to why the search or seizure after sun-set and before sun-rise were necessary. Not only that, but after writing down the information received, and recording the reasons of his belief for the search after sun-set, the police officer was required to forthwith send the copy thereof to his immediate official superior. The police officer did neither of the things and thereby set the mandatory provision of Section 42 of the Act at naught. On such technical point going to the root of the case, the prosecution had to decamp. Against such submission the learned Addl. Public Prosecutor argued that the Court in such serious offences might not show liberal or soft approach contorting the provisions of the Act amounting to undue connivance at the wrong-doers. The approach of the Court might be pragmatic and promoting the object of the Act. According to him, strict non-compliance of Sec. 42 of the Act would not be fatal to the prosecution. He then took us to the entire evidence on record in order to show that the lower court had committed no error either of law or of fact, and there was no reason for us to set the evaluation right and upset the verdict of the lower court.

4. When the whole appeal thus hinges on one point namely non-compliance of Sec. 42 and its effect going to the root of the case, we would not dwell upon other points losing outving effect; we would confine to the only solitary point. The duty of the Court is to adjudicate in accordance with law and binding case laws

and interpret the provisions of law having due regards to the natural and plain meaning of the words used rather than attaching undue significance to the meaning foreign to the words used. Correct, logical and sound interpretation and approach, congruous to sound interpretation of law, even if unpalatable to the party or others cannot be branded as unpragmatic and defeating the object of the Act. The Court cannot ignore the realities of the law or Act.

5. On perusal of evidence on record and law applicable, we find that the contention advanced on behalf of the appellant is not a gimerack but certainly weighty and cannot be undervalued on any count. For proper appreciation of the contention, it is necessary to have a look at Section 42 of the Act and pronouncement of the Apex Court.

6. What can be deduced on perusal of Section 42 of the Act is that if the police officer has to take a search of a building or conveyance and seize the prohibited goods therefrom on receipt of the information from any person, he is under the obligation to reduce the information received into writing. If he believes that search and seizure between Sun-set and Sun-rise is absolutely necessary he is bound to record the reasons of his such belief. After reducing the information into writing or recording the reasons of his own belief, it is incumbent upon him to send the copy thereof forthwith to his official superior. Such provision is mandatory and non-compliance thereof will certainly vitiate the trial despite other points or aspects of the case are quite in consonance with law. For our such view, a reference of the decision in the case of State of Punjab vs. Balbir Singh - AIR 1994 S.C. 1872 may be made. Such provision is made so as to have check on the investigating agency; and protect the liberty of the citizen from being jeopardized. Non-compliance of Sec. 42 of the Act is therefore certainly fatal to the prosecution.

7. We perused the evidence on record with extra care. Of course, the entry in the Station Diary (Exh.28) shows that the information received by the P.I. was reduced into writing; and it is also clear therefrom that P.I. also recorded the reasons of his belief about the search and seizure being necessary between Sun-set and Sun-rise; but the prosecution cannot take every thing easy thereby, and frolic. Sub-Section (2) of Sec. 42 of the Act casts an obligation on the investigating agency receiving the information about the offence under the Act to send the copy thereof to his immediate official

superior. If that is not done, the provision cannot be said to have been fully complied with, and the prosecution will have to face the consequences of non-compliance of the mandatory provision. The record no where shows that the copy of the information reduced in writing was forthwith sent to the immediate official superior. The police officer has in his evidence (Ex.43) categorically made clear that he informed on phone and did not send the copy because he did not find it proper to do so, and he rest contented with telephonic talk. The entry (Ex.28) also does not support the prosecution. There is thus non-compliance of Section 42 of the Act. When that is so, in view of the abovereferred decision of the Apex Court, the trial is vitiated. Consequently the conviction and sentence inflicted with regard to the offence u/s. 17 r/w. Sec. 18 of the Act are required to be quashed.

8. The appellant is also convicted and sentenced of the offence under Section 66-A of the Bombay Prohibition Act. Mr. Shah, the learned Advocate representing the appellant submitted that, that charge also would not sustain but he failed to point out any thing from the record or Bombay Prohibition Act which would support his contention. No doubt, Section 42 (2) of the Act is not complied with and therefore the charge under Section 17 read with Sec. 18 of the Act cannot be sustained and on that count the appellant is entitled to have his acquittal in that regard, but there is nothing likewise in the Bombay Prohibition Act which casts an obligation on the investigating agency, and non-compliance thereof would vitiate the trial. Above stated non-compliance would not under Section 100 of Criminal Procedure Code make the search and seizure illegal or vitiate trial. On careful examination of the evidence on record, we are satisfied the charge of the offence u/s. 66-A of the Bombay Prohibition Act is established beyond doubts. The evidence of the Investigating Officer supported by the panch witness Vikramsinh Khansinh Rajput (Exh. 22) makes it abundantly clear that the appellant was found in possession of opium and was having no pass or permit. The learned Judge below was therefore right in convicting and sentencing the appellant for the offence under Section 66-A of the Bombay Prohibition Act.

9. The learned Judge below has not passed a separate sentence for the offence under Section 66 of the Bombay Prohibition Act as the appellant was also convicted under Section 17 read with Sec. 18 of the Act providing heavy sentence, but when the charge under Section 17 r/w. Sec. 18 of the Act for the reasons stated hereinabove cannot

be sustained, we think it proper to inflict a reasonable sentence having regard to the nature of the offence. We are told that the appellant is in Jail from the date on which the lower Court convicted him. He is therefore in jail from 10-8-1993. We therefore sentence him to suffer imprisonment he has already undergone. By now therefore he has served out the sentence we are inflicting. He is therefore entitled to be released forthwith.

10. For the aforesaid reasons, the appeal is required to be partly allowed. The order of the lower Court convicting and sentencing the appellant of the offence u/s. 17 r.w. Sec. 18 of the Act is hereby quashed and set aside, and he is acquitted thereof. The order of conviction of the offence under Sec. 66-A of the Bombay Prohibition Act is hereby maintained and the appellant for the same is sentenced to the imprisonment already undergone by now. As the appellant by now has undergone the sentence we have inflicted, he be set at liberty forthwith if no longer required in any other case.

11. The muddamal be disposed of as per the order of the lower Court.

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